

JOURNAL OF THE HOUSE

First Regular Session, 93rd GENERAL ASSEMBLY

FIFTH DAY, WEDNESDAY, JANUARY 12, 2005

The House met pursuant to adjournment.

Speaker Jetton in the Chair.

Prayer by Reverend James Earl Jackson.

O Lord, our Lord, how majestic is Your name in all the Earth. You have displayed Your splendor above the Heavens!

Direct our thoughts today. May we enact good statutes and confirm just decisions in order that all would benefit and enjoy a better quality of life.

As we proceed through this governmental process, help us to maintain honor and respect for one another's ideals and passions with the purpose of fostering comradery and accomplishing legislative goals.

Forgive us for judging inappropriately, complaining about and criticizing one another. May we always be people of integrity.

Guide our hearts in the way of righteousness and truth. May Your abiding presence be with us all throughout this day.

In the name of Your Son we pray, Amen.

The Pledge of Allegiance to the flag was recited.

The Journal of the fourth day was approved as corrected.

MOTION

Representative Dempsey moved that Rule 113 be suspended.

Which motion was adopted by the following vote:

AYES: 158

Aull	Baker 123	Baker 25	Barnitz	Bean
Bearden	Behnen	Bivins	Black	Bland
Bowman	Boykins	Bringer	Brooks	Brown 30
Brown 50	Bruns	Burnett	Byrd	Chappelle-Nadal
Casey	Chinn	Cooper 120	Cooper 155	Cooper 158
Corcoran	Cunningham 145	Cunningham 86	Curls	Darrough
Daus	Davis	Day	Deeken	Dempsey
Denison	Dethrow	Dixon	Donnelly	Dougherty

Dusenberg	El-Amin	Emery	Ervin	Faith
Fares	Fisher	Flook	Franz	Fraser
Goodman	Guest	Harris 110	Harris 23	Haywood
Henke	Hobbs	Hoskins	Hubbard	Hughes
Hunter	Ice	Jackson	Johnson 47	Johnson 61
Johnson 90	Jolly	Kelly	Kingery	Kratky
Kraus	Kuessner	Lager	Lampe	Lembke
LeVota	Liese	Lipke	Loehner	Low 39
Lowe 44	May	McGhee	Meadows	Meiners
Moore	Munzlinger	Muschany	Myers	Nance
Nieves	Nolte	Oxford	Page	Parker
Parson	Pearce	Phillips	Pollock	Portwood
Pratt	Quinn	Rector	Richard	Roark
Robb	Robinson	Roorda	Rucker	Ruestman
Rupp	Salva	Sander	Sater	Schaaf
Schad	Schlottach	Schneider	Schoemehl	Selby
Self	Shoemyer	Skaggs	Smith 118	Smith 14
Spreng	Stefanick	Stevenson	St. Onge	Storch
Sutherland	Swinger	Threlkeld	Tilley	Viebrock
Villa	Vogt	Wagner	Wallace	Walsh
Walton	Wasson	Wells	Weter	Whorton
Wildberger	Wilson 119	Wilson 130	Witte	Wood
Wright-Jones	Wright 137	Wright 159	Yaeger	Yates
Young	Zweifel	Mr Speaker		

NOES: 000

PRESENT:000

ABSENT WITH LEAVE: 004

Avery	George	Jones	Marsh
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VACANCIES: 001

MESSAGES FROM THE SENATE

Mr. Speaker: I am instructed by the Senate to inform the House of Representatives that the Senate has taken up and adopted **HCR 1**.

Mr. Speaker: I am instructed by the Senate to inform the House of Representatives that the President Pro Tem has appointed the following escort committee to act with a like committee of the House pursuant to **HCR 1**: Senators Bartle, Loudon, Crowell, Mayer, Ridgeway, Koster, Coleman, Callahan, Wilson and Green.

ESCORT COMMITTEES

The Speaker appointed the following committee to escort Lieutenant Governor Peter Kinder and members of the Senate to the dais: Representatives Tilley, Cooper (158), Black, Wilson (130), Jackson, Cunningham (86), Aull, Curls, Johnson (90) and Corcoran.

The Speaker appointed the following committee to escort the Honorable Ronnie L. White, Chief Justice of the Supreme Court of Missouri to the dais: Representatives Parker, Yates, Goodman, Wright (137), Flook, Fares, Robinson, El-Amin, Spreng and Lowe (44).

JOINT SESSION

The hour of the Joint Session having arrived, the Senate in a body was admitted and Lieutenant Governor Kinder, presiding, called the Joint Assembly to order.

The Secretary of the Senate called the roll, which showed a majority of the Senators present:

AYES: 031

Bartle	Bray	Callahan	Cauthorn	Champion
Clemens	Coleman	Crowell	Days	Dougherty
Engler	Gibbons	Graham	Green	Griesheimer
Gross	Kennedy	Klindt	Koster	Loudon
Mayer	Nodler	Purgason	Ridgeway	Scott
Shields	Stouffer	Taylor	Vogel	Wheeler
Wilson				

NOES: 000

PRESENT: 000

ABSENT WITH LEAVE: 001

Dolan

VACANCIES: 002

The Chief Clerk of the House called the roll, which showed a majority of the Representatives present:

AYES: 153

Aull	Baker 123	Baker 25	Barnitz	Bean
Bearden	Behnen	Bivins	Black	Bland
Bowman	Boykins	Bringer	Brooks	Brown 30
Brown 50	Bruns	Burnett	Byrd	Chappelle-Nadal
Casey	Chinn	Cooper 120	Cooper 155	Cooper 158
Corcoran	Cunningham 145	Cunningham 86	Curls	Darrough
Daus	Davis	Day	Deeken	Dempsey
Denison	Dethrow	Dixon	Donnelly	Dusenberg
El-Amin	Emery	Ervin	Faith	Fares
Fisher	Flook	Franz	Fraser	Goodman
Guest	Harris 110	Harris 23	Haywood	Henke
Hobbs	Hoskins	Hughes	Icet	Jackson
Johnson 47	Johnson 61	Johnson 90	Jolly	Kelly
Kingery	Kratky	Kraus	Kuessner	Lager
Lampe	Lembke	LeVota	Liese	Lipke
Loehner	Low 39	Lowe 44	May	McGhee
Meadows	Meiners	Moore	Munzlinger	Muschay
Myers	Nance	Nieves	Nolte	Oxford
Page	Parker	Parson	Pearce	Phillips
Pollock	Portwood	Pratt	Quinn	Rector
Richard	Roark	Robb	Robinson	Roorda
Rucker	Ruestman	Rupp	Sander	Sater
Schaaf	Schad	Schlottach	Schneider	Schoemehl
Selby	Self	Shoemyer	Skaggs	Smith 118
Smith 14	Spreng	Stefanick	Stevenson	St. Onge

Storch	Sutherland	Swinger	Threlkeld	Tilley
Villa	Vogt	Wagner	Wallace	Walsh
Walton	Wasson	Wells	Weter	Whorton
Wildberger	Wilson 119	Wilson 130	Witte	Wood
Wright-Jones	Wright 137	Wright 159	Yaeger	Yates
Young	Zweifel	Mr Speaker		

NOES: 000

PRESENT: 000

ABSENT WITH LEAVE: 009

Avery	Dougherty	George	Hubbard	Hunter
Jones	Marsh	Salva	Viebrock	

VACANCIES: 001

The Doorkeeper announced the approach of the Honorable Ronnie L. White, Chief Justice of the Supreme Court of Missouri. Chief Justice White was duly escorted to the House Chamber and to the Speaker's dais where he delivered the following message to the assembly in Joint Session.

STATE OF THE JUDICIARY ADDRESS

By

Chief Justice Ronnie White

President Kinder, Speaker Jetton, distinguished members of the Senate and House of Representatives, honorable statewide elected officials, esteemed Court colleagues, and honored guests – I thank you for the opportunity to come before you today. First, I want to take a moment to welcome the newest member of our Court. In a day and age in which courts throughout the country sometimes are accused of sitting in ivory towers, isolated from the world surrounding them, we are blessed with a person who has spent her entire judicial career breaking down these perceived barriers. Judge Mary Russell has sought to open the doors of our judicial processes to all who want to see them, and anyone who has met her knows that her affable demeanor and common-sense voice will add to the collegiality of our Court. She is an experienced appellate judge, serving nine years on the Court of Appeals, Eastern District. During her first year on the bench, I had the pleasure of being one of her colleagues. Since her appointment to the Supreme Court, Judge Russell has become involved in several Jefferson City civic activities, including volunteering as a truancy court judge in a local middle school. She also meets with students, parents and teachers each week, holding a mock court, to help ensure that students attend school regularly. Please join me in welcoming the Honorable Mary Rhodes Russell. I encourage any of you who do not know her already to take the opportunity to meet her – I am sure that you are going to like Judge Russell.

We also look forward to getting to know all of you, because as we all know, Judge Russell is not the only new officeholder in Jefferson City this year. Accordingly, we wish to extend an invitation to all of the new legislators to join us at the Supreme Court this afternoon so we can open what we hope proves to be just the beginning of a fruitful dialogue between our two branches of government.

We stand at the forefront of a new legislative session, a session that brings with it a new Speaker, a new President Pro Tem, new minority leaders in both chambers, and, of course, a new Governor, along with other new statewide elected officials and legislators. It is clear that the collective will of the people of this great state has dictated to us that change must be embraced, along with all the promises, challenges and hope that change brings. When the voters of this state deliver messages such as these, their importance is rarely lost on members of the legislative or executive branches whose job it is to carry them out.

We in the Judiciary must listen to this message of change as well. We must continue to look at what we might do to improve our efficiency and effectiveness so that public trust and confidence in our judicial system remains high. Public trust is not merely an amorphous concept to which we pay lip service; indeed, it is the very foundation of our

judicial system and ultimately our democracy. It is an ongoing covenant between the governing and the governed, often renewed in the most unexpected times and places – places such as the Ukraine, where recent electoral and constitutional crises pushed the Judiciary into the middle of critical decisions on which the very rule of law hung in the balance. Even though it was certain that a sizable portion of the populace would disagree vehemently with its decision, no matter what it was, that nation took a major step forward into the community of nations by agreeing with and enforcing the Judiciary's obligation to make such a decision.

On a smaller scale, here in Missouri, it is this balance that the Judiciary must strike on a daily basis as we serve our role as the third, coequal branch of government. We must not presume to think that the greatly overused phrase "judicial independence" allows us to view ourselves as above any other branch of government or as unaccountable to the people we serve. Rather than *independence*, let us talk instead of *interdependence*. As Abraham Lincoln noted so eloquently 144 years ago: "A house divided against itself cannot stand."

The same can be said of our three branches of government. We can – and must – be faithful not only to the constitution but also to each other and to the roles we have been given by the architects of this great system. We in the Judiciary cannot extend ourselves into areas where our constitution or laws do not permit us to tread. Instead, we must remain neutral – free from political or ideological philosophies – free from high-dollar political campaigns – and retain faithfulness to the rule of law above all else.

Our role is fundamentally different from that of either the legislative or the executive branch in two ways. First, we do not have the power to change any law that we see fit to change or to proclaim law where no such law exists. Rather, we must only deal with the specific facts and issues that are brought before us, and even then we must only interpret the law, not make the law. Second, our role is not to represent the will of the people directly as you do. Instead, we exist to resolve disputes according to the rule of law and its principles. In the end, the Judiciary's role in our system of government is to make sure that the laws you pass and the constitutions of this great state and nation – laws and principles that we *all* are sworn to uphold and protect – stand as a bulwark of security and a model for the rest of the world. No one in our state – or in our Judiciary – shall be above the law!

It may be that, in protecting these precepts, we run afoul of what is perceived as the will of the people on a given case or legal issue. However, we are constrained by our past rulings, the laws passed by this general assembly, our state and federal constitutions, and decisions of the United States Supreme Court. Taken together, this body of law preserves the will of the majority and the rights of the minority all at once, a tension that may result in decisions that, in some cases, are deemed by many to be unpopular. But popularity is not a criterion to be applied to judicial opinions. As a result of this tension – and I know this will surprise you – sometimes people might even be upset with us! Of course, we are in a business where typically half the people disagree with our decisions because they lost, and even a portion of those who won are upset because they do not think they won enough – and the people who *are* happy never seem to call their legislators! Regardless of this reality, we must welcome criticism and take it as evidence that the system of checks and balances and the rule of law that our forefathers envisioned are still working.

As United States Supreme Court Chief Justice William Rehnquist noted earlier this month in his annual report on the State of the Federal Judiciary, "criticism of judges and judicial decisions is as old as our republic, an outgrowth to some extent of the tensions built into our three-branch system of government." He further noted, "to a significant degree those tensions are healthy in maintaining a balance of power in our government."

While it may seem strange to some, a certain degree of tension between the branches can produce a more effective government for the people as a whole while ensuring that no branch of government can impinge on individual rights inappropriately. As each branch watches the others, all are driven to excel and meet the challenges raised in this ongoing experiment that is our system of government.

However, we must not let these tensions hinder or destroy our ability to cooperate with one another – remember, for example, the success that the cooperative Commission on Children's Justice has had in making strides toward real reform in our state's child abuse and neglect system. We also must not let these natural tensions prevent us from maintaining the consistency in the rule of law to which the people of this state are entitled.

I know that, as this session moves forward, you will spend countless hours looking deeply at how to improve the economy of this state, at how best to improve the lives of its citizens. All of us in government, all of our working

people, all of our corporate citizens and the public at large want our state to grow and be prosperous. We want to experience good wages and benefits and healthy profits to expand commerce and spur the economy. As this general assembly addresses the issues of jobs and economic growth, I ask you to consider carefully the Judiciary's role in Missouri's economic engine. We play, in fact, a vital role and one that is not as easily recognized as, for example, the economic growth prerequisites of good transportation, good schools, a trained work force and fair taxes.

You will find that very high on industry's list of necessary components in reviewing the attractiveness of any state for relocation or for new plants is a solid, predictable, professional and efficient judicial system in which they can get a fair and consistent application of the law and treatment of their people. Corporations do not expect to receive a favorable decision every time they go to court, but they do expect to have the courts open every day of the week, every week of the year, available as a forum in which business interests can be litigated fairly and expeditiously. And these corporations also expect that the courts will not be swayed by public opinion or concerned about inflaming some interest group but rather will stick to their judicial business of applying the law fairly.

Our business centers on providing efficient services. We are not seeking to make a profit; rather, we seek to provide high quality judicial services at the lowest possible cost. Justice is served, disputes are settled fairly and promptly, and the economy marches on. We understand our role and we will, with your support, accomplish this mission. One other point: our courts, at an annual cost of \$140 million in state general revenue, generated roughly \$395 million in positive economic impact to our state. This was through fees, fines and costs paid to government entities, and money paid through our courts when private individuals and businesses seek our assistance in enforcing decisions. Money paid to government entities is distributed annually to local schools, counties, the state, and various funds such as the crime victims' compensation fund, the head injury fund, the prosecuting attorneys' training fund, and so on. In other words, we do our share.

As Alexander Hamilton so wisely observed 200 years ago, the judiciary has neither the power of the sword or of the purse, but merely judgment. Therefore, as you debate the various economic proposals and other matters that are certain to cross your desks, I ask that, as the body to whom the power of the purse has been given, you consider the role you play in preserving – and, indeed, in improving – our Judiciary and its resources. I hope to work with you in finding new ways to maintain a well-qualified judiciary and judicial staff, and I hope that, in the end, together we may live out our state motto – “*Salus Populi Suprema Lex Esto*” – Let the *welfare* of the people be the supreme law. Thank you.

The Joint Session was dissolved by Senator Shields.

Speaker Jetton resumed the Chair.

HOUSE COURTESY RESOLUTIONS OFFERED AND ISSUED

House Resolution No. 63

through

House Resolution No. 74 - Representative Lager

House Resolution No. 75 - Representative Barnitz

House Resolution No. 76 - Representative Wallace

House Resolution No. 77

through

House Resolution No. 79 - Representative Wilson (130)

House Resolution No. 80 - Representative Pearce

House Resolution No. 81

through

House Resolution No. 88 - Representative Lager

House Resolution No. 89

through

House Resolution No. 92 - Representative Byrd

House Resolution No. 93 - Representative Kuessner
House Resolution No. 94 - Representative Jackson
House Resolution No. 95 - Representative Bruns

INTRODUCTION OF HOUSE BILLS

The following House Bills were read the first time and copies ordered printed:

HB 207, introduced by Representative Cooper (120), relating to for-hire motor carriers.

HB 208, introduced by Representatives Icet, Byrd and Jetton, relating to civil actions for damages.

HB 209, introduced by Representative Cooper (120), relating to assessment and collection of various taxes on telecommunications companies.

HB 210, introduced by Representative Pearce, relating to the designation of a certain highway.

HB 211, introduced by Representatives Sutherland and Myers, relating to the large carnivore act.

HB 212, introduced by Representative Parker, relating to wiretapping.

HB 213, introduced by Representative Deeken, relating to veterans.

SECOND READING OF HOUSE BILLS

HB 190 through **HB 206** were read the second time.

The following members' presence was noted: George and Jones.

ADJOURNMENT

On motion of Representative Dempsey, the House adjourned until 10:00 a.m., Thursday, January 13, 2005.

CORRECTION TO THE HOUSE JOURNAL

AFFIDAVIT

I, State Representative Bob Dixon, District 140, hereby state and affirm that my vote as recorded on Page 43 of the House Journal for Tuesday, January 11, 2005 showing that I voted absent with leave was incorrectly recorded. Pursuant to House Rule 88, I ask that the Journal be corrected to show that I voted aye. I further state and affirm that I was present in the House Chamber at the time this vote was taken, I did in fact vote, and my vote or absence was incorrectly recorded.

IN WITNESS WHEREOF, I have hereunto subscribed my hand to this affidavit on this 12th day of January 2005.

/s/ Bob Dixon
State Representative

State of Missouri)

/s/ Stephen S. Davis
Chief Clerk

SIXTH DAY, THURSDAY, JANUARY 13, 2005

HB 207 through HB 213